

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SIDNEY CARY COLEMAN,
Petitioner.

No. 2 CA-CR 2022-0136-PR
Filed May 18, 2023

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Petition for Review from the Superior Court in Maricopa County
No. CR2018006684001DT
The Honorable Monica S. Garfinkel, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Law Office of Stephen M. Johnson Inc., Phoenix
By Stephen M. Johnson
Counsel for Petitioner

MEMORANDUM DECISION

Judge Gard authored the decision of the Court, in which Presiding Judge Eppich and Chief Judge Vasquez concurred.

G A R D, Judge:

¶1 Petitioner Sidney Coleman seeks review of the trial court's order dismissing his petition for post-conviction relief, filed pursuant to Rule 33, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Ainsworth*, 250 Ariz. 457, ¶ 1 (App. 2021) (quoting *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007)). Coleman has not sustained his burden of establishing such abuse here.

¶2 Coleman was charged with ten counts of sexual exploitation of a minor, based on child pornography files stored on a hard drive found on his nightstand. After a settlement conference, at which the prosecutor explained the strength of the state's case—including its ability to prove his dominion and control of the hard drive—Coleman accepted a plea offer. At the change of plea hearing, his attorney gave a factual basis for the plea: "Mr. Coleman knowingly attempted to possess a video, which is the named file in the indictment which contains sexually exploitive material, containing a minor under the age of 15." When asked if the factual basis was accurate, Coleman responded, "Yes," and entered guilty pleas to three counts of attempted sexual exploitation of a minor under fifteen. The trial court accepted his pleas.

¶3 On the date set for sentencing, when asked to give a statement, Coleman stated that his mistake had been "buying a computer from a pawn shop" and that he would "continue to fight" to "vindicate" himself. The trial court expressed concern that Coleman was claiming he had not committed the offenses, and after Coleman refused to retract the statement he had made, the court continued sentencing. Coleman thereafter filed a motion to withdraw his guilty pleas, asserting that "he did not commit the crimes."

¶4 The trial court denied the motion to withdraw, determining Coleman had "not met his burden" to establish manifest injustice as required by Rule 17.5, Ariz. R. Crim. P. The court sentenced Coleman to a seven-year prison term on one count and suspended the imposition of

sentence on the remaining counts, placing Coleman on lifetime terms of probation.

¶5 Coleman thereafter sought post-conviction relief, arguing in his petition that his pleas had not been “knowingly and intelligently entered” because counsel “did not adequately explain that mere possession of the hard drive” was insufficient to sustain a conviction, that he had “shown a manifest injustice sufficient” to withdraw his pleas, and that he had received ineffective assistance of counsel. The trial court held an evidentiary hearing, after which it denied relief.

¶6 On review, Coleman argues “the trial court should have allowed [him] to withdraw from his plea agreement” and erred in determining he had not received ineffective assistance of counsel. Our review of the court’s factual findings after an evidentiary hearing “is limited to a determination of whether those findings are clearly erroneous”; we “view the facts in the light most favorable to sustaining the lower court’s ruling, and we must resolve all reasonable inferences against the defendant.” *State v. Sasak*, 178 Ariz. 182, 186 (App. 1993). When “the trial court’s ruling is based on substantial evidence, this court will affirm.” *Id.*

¶7 Rule 17.5, Ariz. R. Crim. P., provides that a superior “court may allow a defendant to withdraw a plea of guilty . . . if it is necessary to correct a manifest injustice.” The rule “is to be liberally interpreted, and doubts are to be resolved in favor of allowing withdrawal of the plea.” *State v. Dockery*, 169 Ariz. 527, 528 (App. 1991). We review a court’s decision under this rule for an abuse of discretion. *State v. Cramer*, 192 Ariz. 150, ¶ 8 (App. 1998).

¶8 Our supreme court explained, quoting a former comment to Rule 17.5, “The term manifest injustice is intended to include denial of effective assistance of counsel, failure to follow the procedures prescribed by Rule 17, and incorrect factual determination made under Rule 17.3, and such traditional grounds as ‘mistake and misapprehension,’ and ‘duress and fraud.’” *State v. City Court*, 131 Ariz. 236, 237 (1981) (citations omitted). Manifest injustice does not exist simply because a defendant has “changed his mind,” *State v. Ellison*, 111 Ariz. 167, 168 (1974), or is disappointed with the sentence imposed, *State v. Gibbs*, 6 Ariz. App. 600, 602 (1968). In determining if counsel’s ineffectiveness has created a manifest injustice, we consider “if the advice defendant received from his trial counsel is tantamount to ineffectiveness of counsel” as defined by *Strickland v. Washington*, 466 U.S. 668 (1984). *State v. Anderson*, 147 Ariz. 346, 351 (1985); see also *State v. Nash*, 143 Ariz. 392, 397-399 (1985).

¶9 “To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.” *State v. Bennett*, 213 Ariz. 562, ¶ 21 (2006); *see also Strickland*, 466 U.S. at 687. To show prejudice, a defendant must show that there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

¶10 Coleman claims that “counsel failed to properly advise and explain the elements of the crimes,” particularly in regard to the distinction between knowing possession of the hard drive and knowing possession of the child pornography files. But at the evidentiary hearing on his petition, counsel testified she had explained the distinction, as well as the factual basis for his plea, and Coleman had understood. Coleman’s argument on review, both as to the trial court’s denial of his motion to withdraw and his claim of ineffective assistance of counsel, amounts to a request for this court to reweigh the evidence presented at the hearing, which we will not do. *See State v. Fritz*, 157 Ariz. 139, 141 (App. 1988) (trial court sole arbiter of credibility); *Sasak*, 178 Ariz. at 186 (“duty of the trial court to resolve any conflicts in the evidence”). Rather, because the court’s ruling is supported by substantial evidence, we cannot say it abused its discretion. *See Sasak*, 178 Ariz. at 186 (when “trial court’s ruling is based on substantial evidence, this court will affirm” and evidence “not insubstantial” because testimony is conflicting).

¶11 We grant the petition for review, but deny relief.